

A school district or library media specialist interested in implementing such a position could be sure of being in conformance with the law and with intellectual freedom principles. A rule or policy might use language such as:

Those circulation records (such as book cards) which reveal the names of students or other patrons of the school's library media center [or district's library media centers] will be retained in confidential files or will be eradicated or destroyed. The library media specialist may determine to release such records in the process of seeking the return of overdue materials, in assessing fines, in compliance with valid board policy or administrative rules, or in individual cases when the need for release outweighs the need for confidentiality. However, at no time will blanket access to these records be provided.

The computer is making it easier for school library media centers to retain adequate circulation records and provide confidentiality. Some large schools may also find book charging machines used in conjunction with library cards to be feasible. Student library cards and/or ID numbers would need to be retained at the desk especially in schools serving elementary and middle school students. However, such records are still not feasible for many school library media centers. Therefore, other options need

to be explored. Three suggestions are to:

- 1) File all borrowers' cards at the charging desk. This would require more space at the charging desk plus considerable time for pulling and refiling all the cards. Check out would be slowed down while an authorized person found the card and entered the borrower's name. Check in would also require an additional step. Since the borrower presumably would not be authorized to see the record (unless the previous borrowers' names had been covered, obliterated, or otherwise removed), the signature of the borrower would not be available to verify the transaction in case of disputes.
- 2) Switch to a checkout slip that would be used once and destroyed. This would require designing a slip, preparing a new slip each time a book was checked in — perhaps by typewriter, computer, or copy machine — and destroying the old slip.
- 3) Assign attendants at the charging desk opaque ink marking pens or crayons, and erasers, and have them obliterate the name of the borrower as the item is checked in. This would require provision of good quality marking pens or crayons and time enough to be sure the name was covered and the ink dried before the card was refilled. The rest of the circulation process would

continue the same way. One person reported purple crayon as the most opaque.

Some schools have reported the last method to be the cheapest, not totally efficient, and most messy. Other schools have resisted on the grounds that they see no need for these records to be confidential. Kathy Collins' response was:

With respect to the messiness and the fact that "few building people see a need for it," I can only suggest that they come up with a process to cure the messiness without violating the law... Often we do not see the benefits of a law like this until a case comes up addressing the issue. [It's my recollection that that is how this law on library records came about initially.] Therefore, I can only urge them to comply with the law and find a suitable, less messy alternative to blacking out the names.

The law was indeed the result of challenges such as the one on the privacy of circulation records at the Des Moines Public Library where law officers sought without due process to find out the names of all borrowers of books relating to occult rituals because cattle were being killed and maimed. School library media centers cannot assume there will be no violation of the privacy of their patrons.

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#16

STUDENT PRIVACY

AND

LIBRARY RECORDS

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STUDENT PRIVACY AND LIBRARY RECORDS

In 1980 the Iowa Legislature passed and the Governor signed House File 2240 amending Section 68A.7 of the 1979 Code of Iowa by adding a new subsection. The entire chapter was transferred to Iowa Code Chapter 22 in 1985.

Section 22.7 reads, in pertinent part:

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian, or by another person duly authorized to release information....

13. The records of the library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item from the library....

That subsection apparently required more privacy of circulation records than afforded by refiling cards in pockets in books or other items with borrowers' names displayed on the cards.

Because of questions from librarians in various types of libraries, Barry L. Porter, then State Librarian, sought an opinion from the State Attorney General's office. He received an opinion from Alice J. Hyde, Assistant [Iowa] Attorney General, dated September 30, 1980.

Hyde's Opinion states in part that:

...the lawful custodian or another authorized person may allow examination of public library circulation records which are to be kept confidential pursuant to [then] subsection 68A.7, The Code 1979....

The "lawful custodian" of library circulation records is the library officer or employee entrusted with the responsibility to make and maintain such records. Ordinarily, that individual would be the head or chief librarian, or person occupying a similar position, in each specific library where circulation records are maintained....

The subsection 68A.7 exception would apply not only to circulation records maintained by those libraries usually thought of as serving the public, i.e., the state historical library or city and county libraries, but to libraries operated by school districts, Board of Regents institutions, or state penal institutions....

The lawful custodian of school library circulation records generally would be the school librarian who keeps such records. Although policies concerning release of circulation information may be set by the school principal, the chief administrative officer of the school district, or the elected

school district board of directors, the librarian, as the person entrusted with the records, must order the release under subsection 68A.7, The Code 1979.... If the librarian releases or refuses to release information in contravention of a policy of the body charged with the supervision of the institution which encompasses the library, it may become an internal matter of employee discipline.

In a library where patron's names are recorded on a card which is maintained in the book, steps should be taken to remove that information, which "would reveal the identity of the library patron checking out or requesting an item from the library," from public inspection.... If, however, the librarian as lawful custodian determines that circulation information may be released and no other statutory provision requires the information to be kept confidential² (emphasis added), the cards may remain in the books, available for public inspection and copying. The librarian as lawful custodian may determine that the cards may remain in all books or only certain books. [1980 O.A.G. 825 (Hyde to Porter, #80-9-19).]

In "plain" English this opinion appears to allow local school library media specialists or their administrators to determine whether circulation records will be continued

as "public" records for all or part of the materials in the library media center collection. There is an unresolved "however" attached. "If, however...no other statutory provision requires the information to be kept confidential."²

Footnote No. 2 refers to 20 U.S.C. 1232g, "The Family Educational Rights and Privacy Act." That section states:

1232g(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of the students without the written consent of their parents to any individual, agency, or organization, other than the following—

The exceptions include authorized school, government, and accrediting officials and the student's parents but not other students or the general public.

The law further states that when students are eighteen or over, written consent of the students is needed instead of that of the parent.

It is the opinion of Kathy Collins, legal advisor and Administrative Consultant in the Iowa Department of Education, that the Family Educational Rights and Privacy Act (FERPA) does not make school library circulation records private because they do not meet the definition of "education records" in the federal regulations.

Based on Hyde's opinion, then, if schools or school districts or their library media specialist(s) decided that library circulation records need not be kept confidential, they could leave cards in books and other items, with student names intact, without fear of being in deliberate violation of the law. Schools with inadequate library media center staff may feel this is their only option.

However, school districts and library media specialists may wish to consider a more conservative interpretation of the law and one closer to the tenets of intellectual freedom. In the opinion of Kathy Collins:

The statutory language declares the records to be confidential. The librarian, as lawful custodian, has the option to release the information [only] in given instances. I would advise that a rule or policy be created designating the circumstances under which release may be obtained [e.g., in assessing whether a graduating senior owes book fines]. Release should not be on a totally ad hoc basis.